

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by wpd Sumac Ridge Incorporated for an Order or Orders pursuant to section 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A establishing a location for the applicant's distribution facilities on public road allowances owned by the Municipality of Kawartha Lakes, Ontario, as set out in this application.

EVIDENCE OF THE INTERVENOR, DR. E. J. SALMON

1. The proposed Sumac Ridge wind project consists of five 2.05 MW turbines for a total nameplate capacity of 10.25 MW. The original FIT contract offered in 2010 was for 11.5 MW. The nameplate capacity has been reduced since the original FIT contract.
2. The project is located in an environmentally sensitive area. Part of the project is located on the Oak Ridges Moraine which is protected under the Oak Ridges Moraine Act and Conservation Plan (the "ORMCP"). Other components of the project are located in wetlands, woodlands and run through species at risk habitat. Both O. Reg 359-09 and the ORMCP, have special provisions that apply.
3. ORMCP and the Technical Guide to REA require that the full intent of the Oak Ridges Moraine be considered and in accordance with Section 41 of the ORMCP that "the need be demonstrated" and that "there is no reasonable alternative". This applies to linear infrastructure such as roads, hydro corridors and pipelines, not infrastructure that can be located in other areas.

4. While referring to the “minimum” requirements set out in O Reg 359/09 discussed above, it also states that “applicants are expected to consider the full intent of the ORMCP when evaluating effects that will or are likely to occur as a result of the proposed project”. It is my view that this direction applies equally to decision makers.¹
5. The rationale for the requirement in Section 41 of the Oak Ridges Moraine Conservation Plan was explained by Victor Doyle, Manager, Provincial Planning Policy Branch, Ministry of Municipal Affairs and Housing. Mr. Doyle’s understanding of the history of the Oak Ridges Moraine, as the Provincial Lead on its development and implementation is unsurpassed.
6. Mr. Doyle stated:

“Having been involved in the preparation of the Plan, I can attest that the discussion focussed on only allowing infrastructure that needed to cross the moraine (ie. to connect communities or ensure continuity of linear infrastructure) and/or to service the communities located within the Plan. I can further advise that the Moraine was not intended to form a reserve for any sort of infrastructure serving the major urban agglomerations beyond its boundary.”²
7. The rationale for Section 41 is echoed in the testimony provided by Ms. Debbe Crandall, as a member of the Technical Working Committee in which she states:

“This infrastructure section was written in response to the advisory panel’s acknowledgement of the linearity of these essential public services and that while they may be considered ‘essential’ all efforts must be made to situate them to avoid disruption of the moraine’s significant ecological and hydrological features and functions. Hence, all projects would have to demonstrate that there is a need for the project and that no reasonable alternative exists. If there is a reasonable alternative then it stands that that alternate

¹ Tab 17, Victor Doyle, Manager, Provincial Planning Policy Branch Ministry of Municipal Affairs and Housing, Witness Statement, ERT 13-140-1-2 Para 23, Page 6

² Tab 17, Victor Doyle, Manager, Provincial Planning Policy Branch Ministry of Municipal Affairs and Housing, Witness Statement, ERT 13-140-1-2 Para 17, Page 6

- location would be chosen to avoid disruption of the moraine's significant ecology and hydrology.”³
8. Wpd has no justification for locating this project on the Oak Ridges Moraine. ⁴
- Additionally, section 44. O. Reg 359/09, prohibits the placement of turbines within 30m of a waterbody on the Oak Ridges Moraine. Despite evidence that clearly shows water flowing in the watercourses ⁵ and the attached survey showing that T5 is located within 30m, the Applicant neglected to provide any information on the watercourses or the setback to FCH(A) and FCH(B).
9. Additionally, Section 41 of the ORMCP, prohibits the opening of unopened road allowances. Wild Turkey Road, an unopened road, is located on the Oak Ridges Moraine. The Intervenor submits that the Applicant never fully disclosed accurate information to the MOECC when it made its application to for an REA.
10. Furthermore, the Intervenor feels that the Applicant did not fully disclose the environmentally sensitive features such as the presence of the wetlands, woodlands and species at risk habitat along the proposed collector line route on Gray Road.
11. The Board's mandate regarding the 'public interest', in respect of applications under section 92 of the *Ontario Energy Board Act*, 1998 considers:
- (i) *the interest of consumers with respect to prices and the reliability and quality of electricity services; and*
 - (ii) *where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewal energy sources.*

³ Tab 8, Debbe Crandall, Witness Statement, Page 2

⁴ Tab 17, Witness Statement of Victor Doyle, Cham Shan v. MOE, ERT 13-13-140-1-2, Exhibit 1

⁵ Tab 18, Ali Denure, Witness Statement, ERT 13-1401-14-1-2-Video and Photos

12. The Government of Ontario policy regarding renewable energy such as the Sumac Ridge project includes: “*a streamlined approvals process with service guarantees for renewable energy projects while ensuring that high safety and environmental standards are met*”.⁶

Issues

13. The Intervenor will demonstrate that the proposed distribution line along the unopened un-assumed and unmaintained road allowance known as Gray Road as well as the connecting line to cross the unopened road allowance Wild Turkey Road by the Applicant wpd Canada as part of the Sumac Ridge energy facility do not meet high safety and environmental standards and thus are not consistent with the policies of the Ontario government, that the project adversely interferes with the Intervenor’s property rights as well as the persuasive guidance provided by the ORMCP, O. Reg. 359/09 and the approved Official Plan of the City of Kawartha Lakes.
14. Even though the Ontario Energy Board does not have authority to review or approve environmental issues related to electricity transmission since that is a responsibility of the Ontario Ministry of the Environment and Climate Change, the Applicant has not disclosed all environmental hazards construction of the distribution line and collector line will create and how these hazards will negatively affect the area to the MOECC.
15. The *Ontario Energy Board Act* authorizes the Ontario Energy Board under Section 57(c) to address environmental matters concerning the environmental impact of the construction of energy generation and transmission facilities even though it is not the principal function of the Board.

⁶ Ontario Renewable Energy Facilitation Office, Green Energy Act, <http://www.energy.gov.on.ca/en/renewable-energy-facilitation-office/#.U0nH46xOUqQ>

Public Interest

16. There is significant public interest in preserving the current physical and cultural form as well as ecological function of both historic road allowances Gray Road and Wild Turkey Road as evident in the numerous public submissions of concern sent to the Ontario Energy Board regarding this application.
17. There is also significant public interest in the Sumac Ridge project. The Ministry of the Environment and Climate Change acknowledged a record number of comments of concern (2874, later updated to 3500) were submitted to the EBR. Interested parties who have registered grave concerns about the Sumac Ridge project include the Buddhist community with thousands of followers in the GTA who see a \$100 million long-term investment in the Cham Shan retreat project now placed in jeopardy, the Seneca Flying School, the Peterborough Airport, Vector Air Services, Flying Colours, NAV Canada, the Township of Cavan Monaghan, the City of Kawartha Lakes, over 5000 people who signed petitions of opposition, naturalists, agencies and individuals working to protect the Oak Ridges Moraine, local conservation authorities, as well as the Williams Treaty and Treaty 20 First Nations.

First Nations

18. First Nations persons who traditionally use the Sumac Ridge project area for hunting, fishing and gathering and who are stewards of the lands in question under Treaty 20 have not been consulted regarding the significant land alteration of Gray Road in order to accommodate the erection of 22 hydro poles as part of a the Applicant's plans for a distribution corridor, or the Applicant's plan to significantly alter the road allowance

Wild Turkey Road. Curve Lake and Hiawatha First Nations are Participants in the Sumac Ridge Environmental Review Appeal.

19. It is the contention of First Nations that the Duty to Consult has not been undertaken by the Applicant wpd Canada. Furthermore, the First Nations assert construction of the project will cause irreversible and serious harm to a traditional hunting, fishing and gathering place.

Landowner Notification

20. One of the affected landowners, Peter Hoefelmayr, owner of Lots 11 and 12, Concession 6, whose property backs onto the road allowance Gray Road, has still not been contacted by, or received any information from the Applicant. An email dated January 7th, 2015 from Mr. Hoefelmayr confirms he has not been contacted by the Applicant, wpd Canada regarding the alteration of the road allowance Gray Road. The application was filed with the Ontario Energy Board on December 20th, 2013.⁷

Other Issues

21. The Applicant has accused the City of Kawartha Lakes as being un-cooperative. Mr. Ron Taylor, the Director of Planning Services indicated that staff reviewed the request through the City's Land Management Committee, and subsequently advised wpd Canada in April 2013, that the application was premature, that issues with the MTO had not been resolved and that a REA approval had not been issued. In response, the Applicant surprised the Municipality by issuing a press release with the headline: **For immediate release Wednesday, May 22, 2013 Kawartha Lakes decision could force expensive**

⁷ Tab 19 - Peter Hoefelmayr, Letter to OEB

Ontario Energy Board Process, indicating that the Municipality may have to pay for the Hearing.⁸

22. Arguably, it is the Applicant who is not being co-operative. The Applicant, as indicated in the following sections in this submission of evidence, did not provide detailed information on either the planned distribution line along the road allowance Gray Road or the collector line to be constructed below ground crossing the road allowance Wild Turkey Road either in the REA application or in this application before the Ontario Energy Board. Instead, vague, conflicting and inaccurate information was provided including important omissions.
23. On September 8th, 2014 as requested, the Intervenor submitted a number of questions (18) to help clarify what is contained in the Application by wpd Canada.⁹
24. On September 8th, the OEB submitted Interrogatories in three sections.¹⁰
25. In the response to Interrogatories dated September 18th, 2014, the Applicant dismissed the majority of the Intervenor's questions as being irrelevant even though Questions 1, 2, and 7 were similar to Questions 1 to 3 submitted by the Ontario Energy Board to the Applicant.¹¹
26. The City of Kawartha Lakes responded on November 3rd, 2014.
27. The Applicant's response included photographs that are not accurate and do not reflect the true conditions of either road allowance Gray Road or Wild Turkey Road.

⁸ Tab 15, Sumac Ridge - wpd Press Release – 2013 May 22

⁹ OEB Web Drawer,
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/448623/view/EJ%20Salmon_Corresp_request%20for%20information_OEB_20140908.PDF

¹⁰ OEB Web Drawer,
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/448625/view/Board%20Staff_%20Interrogatories_wpd%20Sumac%20Ridge_20140908.PDF

¹¹ OEB Web Drawer,
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/449870/view/wpdSumacRidge_IRR_20140918.PDF

Road Allowance

28. Furthermore, in reply to other responses by the Applicant, the City of Kawartha Lakes (the “City”) indicated the Ontario Energy Board cannot rule on access to a municipal road. The City has adopted resolution # CR 2014-279 on March 25, 2014 that prohibits access to an unopened municipal road allowance by the Applicant.¹²
- (i) RESOLVED THAT Report ENG2014-004, Sumac Ridge Wind Turbine Project Impact on Infrastructure (Wild Turkey Road), be received;
 - (ii) THAT any request by wpd Canada and/or future successors for use of the unopened portion of Wild Turkey Road for property access and/or other vehicular traffic to support proposed wind turbine development be refused; and
 - (iii) THAT Report ENG2014-004 and a copy of Council’s decision be forwarded to wpd Canada, the Premier, the Minister of the Environment, the Minister of Energy, the Environmental Review Tribunal and the Ministry of Transportation, Regional Office.
29. *Hislop v. McGillivray (Township)*, 17 S.C.R. 479, endorses that Municipal Council has the sole power to determine whether or not to open an original road allowance for public travel. This case law further reinstates that “the Courts have no jurisdiction to compel municipalities to open such allowances and make them fit for public travel”.
30. Under Section 35 of *The Municipal Act, 2001* municipalities are permitted to restrict usage of road allowances.

Chronology

31. Following the filing of the responses to interrogatories the Applicant filed a letter dated October 7th, 2014 with the Board requesting additional time, until November 14, 2014, to prepare the detailed engineering drawings requested in Board Staff Interrogatory No. 1.

¹² OEB Web Drawer,
[http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/454640/view/City%20of%20Kw
artha%20Lakes_ltr_wpd%20Sumac%20Ridge_20141103.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/454640/view/City%20of%20Kw%20artha%20Lakes_ltr_wpd%20Sumac%20Ridge_20141103.PDF)

The Applicant was directed by the Board to file the requested information by November 28th, 2014.

32. On November 28th, the Applicant requested another extension to December 5th, 2014. Two Location Drawings were provided by the Applicant on December 5th, 2014.¹³
33. On December 19th, 2014, the Ontario Energy Board decided that it will make provision for a second process of interrogatories to allow parties to seek clarification on any matters arising from these drawings.
34. On December 30th, 2014, the Board submitted 10 additional questions to the Applicant. The Intervenor also submitted several questions for clarification on January 12th, 2015.

January 21 Response by Applicant

35. The answers provided by the Applicant on January 21st, 2015 still do not provide a clear picture of how much the road allowance will be altered. The Applicant simply removed the Google map imagery. The new Location Drawings are not based in ground truth. They are abstract conjectures that do not accurately reflect the conditions of the road allowances Gray Road and Wild Turkey Road. The Intervenor has pointed out that the few photos supplied by the Applicant to the Board are inaccurate and misleading.
36. The Applicant still indicates the cleared gravel portion of Gray Road is wider than it actually is and able to accommodate construction vehicles resulting in the claim on page 9, Interrogatory 6 (Paragraph 12), that the Applicant “does not intend to upgrade the road

¹³ OEB Web Drawer,
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/458345/view/wpdSumac_IRR_BoardStaff_20141205.PDF

surface at the time of construction”.¹⁴ The Intervenor asserts the conditions along the road allowance are not as described by the Applicant and elaborates on this point of issue in the section below titled Gray Road. Furthermore the Applicant states in the January 21st, 2015 reply the Applicant will not be using culverts, or drainage and ditches, so water bodies do not need to be considered.

37. There are at least two water bodies within Gray Road including this seepage area in the following photographs that crosses Gray Road in the narrow ‘turn’ area the Applicant now reveals to exist on page 4 in response to OEB interrogatory, indicating the discovery, *“Gray Road is not a straight road and at a certain point, approximately half way along the route of the distribution line, Gray Road is closer to the existing property lines and therefore cannot accommodate a 5 m distance. To account for this variance, the Applicant applied a lower buffer value so that the distribution line would be 3.1 m from the edge of the right-of-way.”*

¹⁴ Applicant Response to Interrogatories, January 21st, 2015
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/463328/view/wpdSumacRidge_IRR_SUPP_EVD_Board%20and%20Salmon_20150121.PDF

38. The Intervenor contends the buffer is less than 3 m. ¹⁵



39. In the answers provided on January 21st, 2015, the Applicant has revealed new information, that being the location of the underground collector lines at the junction of the road allowance Gray Road and Highway 35. However, the Applicant has neglected to indicate that the collector line will cross a tributary of Pigeon River. There is no indication that permits through DFO have been obtained. There is no evidence that the MTO has granted permits to the Applicant to construct a collector line within and under provincial Highway 35. Highway 35 is scheduled to be widened in the near future. ¹⁶

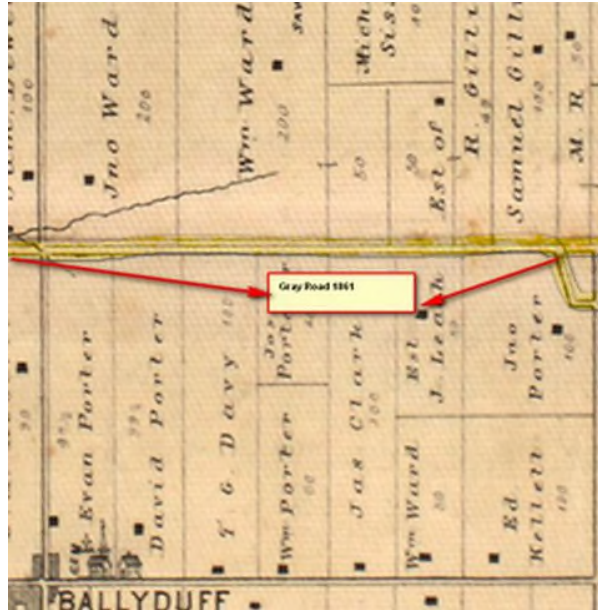
¹⁵ Tab 2, Water & Natural Features Gray Road

¹⁶ Tab 2, Water & Natural Features Gray Road

Gray Road Allowance



40. The area around the road allowance Gray Road and Ballyduff Road to the south was first surveyed in 1817 and was settled by several families. Homesteads were established on the basis of the presence of well-drained soils, proximity to potable water and transportation routes. The road allowance Gray Road is marked on the Tremaine map of 1861 as well as the Northumberland County map of 1878. At that time it was a dirt track that connected several farms. To avoid the high hill at the east end where Gray Road intersected with the road allowance Wild Turkey Road, a short cut was created. This shortcut no longer exists.



Tremaine Map 1861

41. Today, Gray Road is an unmaintained, unassumed municipal road allowance considered by local residents as a hidden trail way. It is used at the current time by recreational users such as hikers, birdwatchers, naturalists, horseback riders. The City of Kawartha Lakes wishes to keep this trail in its present state to encourage protection of natural wildlife corridors and habitat and surface and ground water resources that are connected to the Oak Ridges Moraine. There are several water features within and surrounding the road allowance. The road allowance Gray Road is inaccessible to vehicular traffic. It is also not a through road allowance. It is a dead end trail, ending at the base of the high hill at the eastern edge near the junction of the road allowance Wild Turkey Road. At this point it becomes a single path footway following the contours of the hill.
42. In order to construct the distribution line along the unopened trail road allowance known as Gray Road, it will be drastically altered. Despite the Applicant's claims to the contrary, the road allowance will have to be re-constructed and hundreds of mature trees,

shrubs, and native plants will be destroyed. The character of the road allowance will be dramatically changed. The alteration of the historic trail will negatively affect the enjoyment value for all users of the road allowance as well as put their safety in peril. The enjoyment and property value of the Intervenor will be adversely affected.

43. While the Applicant in the response of January 21st, 2015 indicates that placement of hydro poles within a 5 m buffer zone of the property owners' lands will protect recreational users and residents and guarantee continual enjoyment of the road allowance, the Applicant neglects to mention that all the vegetation that provides so much enjoyment for these users will be razed to the ground.
44. The Applicant claims in its response that upgrades to the road allowance not construction vehicle accessible will not be needed also states the recreational value of Gray Road will remain the same post construction as it exists today. The removal of all the vegetation along one side of the allowance destroys its value as a recreational trail. Furthermore vegetation removal along the length of the road allowance will cause serious environmental harm to the hydrologic features and will increase risk of flooding, erosion and pollution. No permits have been granted by the Conservation Authority.
45. Gray Road is a dead end trail. In order to allow the passage of construction vehicles, a turn-around area will have to be created. Wpd Canada has not included plans for a turnaround area either in the REA application or in this application before the OEB.
46. The dead end as well as the widening and opening of a trail such as Gray Road will invite unwanted vehicular traffic. This traffic will jeopardize the safety of hikers and horseback riders. Spills from vehicles either for construction, maintenance or through other vehicular usage will occur in a hydrologically sensitive area. The widening of the road

allowance in this isolated area will encourage illegal activities. It will lend itself to illegal dumping. Illegal dumping could include materials that will contaminate surface and groundwater. These activities will not only adversely affect immediate property owners, but will place local residents outside of the road allowance in harm's way. The road allowance widening opens the area to trespassers. The long-time protection of this area and use as a recreational trail by the community and abutting property owners and others will be lost.

47. The municipality clearly objects to the application and will not, as stated on line 14 and 15 of the December 20th, 2013 application "*benefit from the road improvements that will result from the Applicant's construction activities within the Road Allowances*". The alteration of Gray Road will be a detriment, detraction and a liability for the City of Kawartha Lakes.
48. The Applicant did not provide specific details in its REA application regarding the alterations to and along the road allowance Gray Road. Construction details were not shared with the City of Kawartha Lakes and have not been shared in the application before the Ontario Energy Board.
49. The Applicant has changed the position of the distribution line from above ground to below ground to above ground over the past few years.
50. It is unknown what "*identified and developed mitigation measures*" cited on line 12 of the December 20th, 2013 application before the OEB apply to – above ground construction or below ground construction, or what these measures are.
51. The Construction Report supporting the REA application for the Sumac Ridge project is vague as to the position of the distribution line:

“The electrical line will be above or underground, and will connect into a switching station located south-west from the intersection of Highway 35 and Gray Road”¹⁷

52. The Sumac Ridge Environmental Study dated April 2012 which is part of the REA application indicates there will be an aboveground collector line along Gray Road. Serious potential adverse environmental impacts are identified.¹⁸

Above Ground Electrical Line Installation	Month 1	2 weeks	Above ground cabling will be proposed from where the collector lines join (near Turbine 3), and will extend 1.9km on the south side of the undeveloped portion of Gray Road to the Switching Station, located on the southwest corner of Gray Road and Highway 35.	<ul style="list-style-type: none"> • Accidental vegetation damage or removal • Disturbance and/or mortality of local wildlife • Increased erosion and sedimentation • Accidental spills • Changes in soil moisture and compaction
			Installation of new wooden electrical poles will require 1-2m deep holes along the south side of Gray Road, east of Highway 35 for a distance of 1.9km.	

53. The original Ortech Construction Report for the Sumac Ridge project was amended by another consulting firm Stantec in June 2012. This report reveals it is unknown whether the distribution line will be below or above ground along the road allowance Gray Road.

“The collector line exiting Turbine 3 will travel 1.9 km along the undeveloped portion of Gray Road to the switching station. It is undetermined as of publication whether the collector lines exiting Turbine 3 will be above or below ground.”¹⁹

54. However, the Applicant indicated to the MOECC in response to concerns expressed by members of the public posted to the EBR regarding the application for approval of the Sumac Ridge project NO transmission poles will erected along Gray Road. The Sumac

¹⁷ Sumac Ridge Construction Report, Table of Updates, June 2012, page 11, http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_3_CPR_20120601_Web.pdf

¹⁸ Sumac Ridge Environmental Impact Study, April 2012, page 16, http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_7.8_NHA_EIS_20120401_Web.pdf

¹⁹ Sumac Ridge Construction Report, Table of Updates, Precedes document dated June 12, page 5, http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_3_CPR_20120601_Web.pdf

Ridge EBR application was posted for public comment between from April 5th to May 20th, 2013.²⁰

<ul style="list-style-type: none">• concern over ensuring that transmission poles on Gray Road do not topple over in saturated soils	<ul style="list-style-type: none">• wpd will not be installing any poles along Gray Rd.
<ul style="list-style-type: none">• Gray Road is part of a snowmobile trail system and trail used for hiking, bird watching and mountain biking, which would become unavailable	<ul style="list-style-type: none">• We are not upgrading Gray Road to alter its purposes. Construction will only be to bury cables underground, as wpd will not be installing any transmission poles. Any potential impacts on snowmobile trail systems and trails used for hiking, bird watching and mountain biking will be temporary (limited to on-site construction). Modifications to roads and trails will be restored to their original condition.

55. A press release by the Applicant dated May 2013 confirms the distribution line along Gray Road will be below ground, not above ground as indicated in the application before the Ontario Energy Board:

*“wpd Canada, the developer of the Sumac Ridge Wind Farm in the former Township of Manvers, has proposed to install part of the collector lines for the project -- lines which link the turbines and carry electricity produced by the turbines to the project’s transformer substation -- **under portions of Gray Road.**”²¹*

56. The public has not been notified of the continual changes to the distribution line. There is no evidence the City of Kawartha Lakes has been consulted over the multiple changes to the plans for the distribution line along the road allowance Gray Road by the Applicant wpd Canada over the past five years.
57. There is no evidence in the Sumac Ridge REA application that the collector line will consist of 22 hydro poles set along the south side of the Gray Road allowance. Since new details included in this application before the OEB have not been disclosed to the Ministry of the Environment and Climate Change, the full environmental impact is

²⁰ MOECC Disclosures, Environmental Review Tribunal Hearing, 13-140/141/142, Cham Shan Temple v. MOE

²¹ Tab 15, Wpd Canada Press Release, For immediate release Wednesday, May 22, 2013

unknown. Safe, effective transmission as well as the health and safety of residents, users and wildlife will be put at risk.

58. Mapping supplied by the Applicant on December 5th to the Ontario Energy Board indicates hundreds of mature trees, some over a hundred years in age, as well as all other manner of vegetation will be cleared to 3 m around each of the proposed 22 hydro poles which will run almost the entire length of the unopened road allowance Gray Road. The road allowance varies in width and is very narrow in sections. It is heavily vegetated.²²
59. There are several significant water features surrounding, along, and within the road allowance Gray Road. There are several tributaries of Pigeon River, seeps within the road allowance, a wetland, artesian well, and a large pond. Several water bodies are located in and along Gray Road. A large inline pond connected to an artesian well is located south of Gray Road, a wetland exists on the north side, there are seeps along Gray Road and two tributaries of Pigeon River meet at the intersection of Gray Road and Highway 35. These water bodies support animal life such as fish, waterfowl, frogs and turtles.
60. The water table is at the surface for part of Gray Road.

“Starting from Highway 35 and moving east, the first 300 metres of the assessment area contained flat to gently undulating terrain covered with long grasses, brush and small trees. There was water on the surface of 70% of this survey area.”²³

²² OEB Web Drawer, Photographs, Road Allowances Gray Road and Wild Turkey Road, http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/462020/view/E%20Salmon_IR_wpd%20Sumac%20Ridge%20Inc_Attachments_20150112.PDF

²³ Section 5.2.10 Main Feeder Line Along Grey Road, Timmins Martelle Heritage Consultants Inc., Stage 2 Archaeological Assessment, Sumac Ridge Wind Farm, Manvers Township, City of Kawartha Lakes, ON

61. The Applicant has not completed a hydrogeological assessment despite multiple requests by the City and reports to both the MOECC and the public that a hydrogeological report had been conducted and provided to the City of Kawartha Lakes for review.²⁴
62. In order to erect the 22 hydro poles along the length of the road allowance Gray Road, it will need to be made into a sufficient weight bearing road to accommodate construction and maintenance vehicles. This means extensive widening and the application of thousands of cubic metres of fill and aggregates along hydrologically significant sections of the road allowance Gray Road. These actions will alter ground and surface water flow, affect recharge areas and will endanger source drinking water for local residents. It will interfere with the recharge to the wetland as well as the Pigeon River tributaries. Alteration of water features along Gray Road will place area wells in jeopardy including wells used at two nearby elementary schools. Road construction will alter rainfall infiltration patterns, redirect ground water and surface water flow that provides complex fish habitat. Road construction will interfere with the high water table.
63. The removal of hundreds of trees and thousands of plants and shrubs along the length of the road allowance Gray Road that contribute to the water and soil stability will also affect the complex hydrology that exists in this location. The water features are connected to the Oak Ridges Moraine.
64. The NRSI Sumac Ridge Water Assessment conducted for the Applicant indicates that there is no mitigation for one area of Gray Road and that work has to be completed as quickly as possible without listing a time frame in order to avoid serious harm to the road allowance. The report makes mention of ditching in the paragraph below, but there is no

²⁴ Tab 16 - Emails wpd to City of Kawartha Lakes, Hydrogeological Report

other mention of ditching along Gray Road in the Sumac Ridge REA application or this application before the Ontario Energy Board.

9.1.3 Seepage Areas

“It will not be feasible to mitigate sediment entrainment into the seep at S3 using standard methods because it is located directly within Gray Road. As such, impacts may be mitigated by completing work in this location as quickly as possible to minimize the duration of impact.

If the new road is to be pitched slightly to encourage runoff, rock check dams may be staggered through the ditch (if one is present) to encourage sediment deposition. If an area of concentrated flow is identified, it will be treated to reduce sediment movement off-site.”²⁵

65. Soil conditions vary along the road allowance Gray Road varies. According to the 2010 Sumac Ridge Archaeological Assessment, 5.2.10 Main Feeder Line Along Grey (sic) Road, the soil conditions are not consistent.

“Our test pits in these dry areas revealed disturbed, gravel filled loamy sand medium brown topsoil's that were so compact that test pits could not be excavated to subsoil. (emphasis added)

East of this muddy section, the next 75 metres...found that all test pits were between 15-20cm in depth and contained an undisturbed medium brown loamy sand soil over a light yellow sandy subsoil. To the east of this flat terrain area, the south edge of the Grey Road ROW crosses a forested ridge.....

...All test pits dug on top of the ridge area, and in the rolling terrain area at the east end of the main feeder line assessment area ranged between 15-20 cm in depth and contained undisturbed light to medium brown sandy to loamy sandy topsoil over a light yellow sandy subsoil.”²⁶

²⁵Sumac Ridge NRSI Water Assessment and Environmental Impact Study, page 37,
http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_8_WR___EIS_20120301_Web.pdf

²⁶ Sumac Ridge Archaeological Assessment, Grey (sic) Road Feeder Line, page 16,
http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_11.2_Stage_2_AAR_20110701_Web.pdf

66. The Applicant has admitted to the Ontario Ministry of Transportation in a letter dated August 10th, 2011 alteration of Gray Road will cause harm to its ecological functions; changes that will also affect public health and safety.

Proposed Highway 7A Access:

67.

According to Figure 3, Ortech is proposing access to turbines 1 and 3 via an existing residential entrance on Highway 7A. As you know, MTO policy states that where alternate access exists via the municipal road system, then MTO does not permit highway access. During our telephone discussion last week, you explained that there is wetland and species at risk issues should Gray Road be extended to provide access to the site. Prior to approving a Highway 7A mutual entrance, MTO will require the environmental documentation supporting the need to avoid the Gray Road access alternative.²⁷

68. The Applicant has failed to provide a consistent, concise and/or detailed plan for construction of the distribution line along the unopened road allowance Gray Road, a pathway the Applicant acknowledges as being extremely environmentally sensitive and should be avoided as being used as an access road.

Alternative Distribution Route

69. The Application has been initiated under section 41(9) of the *Electricity Act*, which states:

The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the board.

²⁷ Tab 12 - Sumac Ridge Wind Farm – Revised Conceptual Plans Highway 35 & Gray Road, Geog. Township of Manvers, City of Kawartha Lakes, August 10th, 2011 correspondence between Ortech and MTO

70. The Applicant has specified the road allowance known as Gray Road is an environmentally sensitive area and that it needs to be avoided as an access road. The City of Kawartha Lakes wants to keep the road allowance as a recreational trail and does not want it widened and opened to vehicular traffic and wishes to keep its ecological and hydrological integrity intact. Local residents, members of the public and First Nations want the road allowance to remain in its unaltered state. There is an alternative route for the distribution line.

Alternative Route

71. The Applicant can avoid Gray Road altogether and run the distribution line along Highway 7A and Highway 35. The developer of an adjacent wind facility called Snowy Ridge proposes to run their distribution line eastward along Highway 7A. The Snowy Ridge substation is proposed to be located approximately 910 m to the east of the Applicant's access road to Turbine # 1 and Turbine #3.



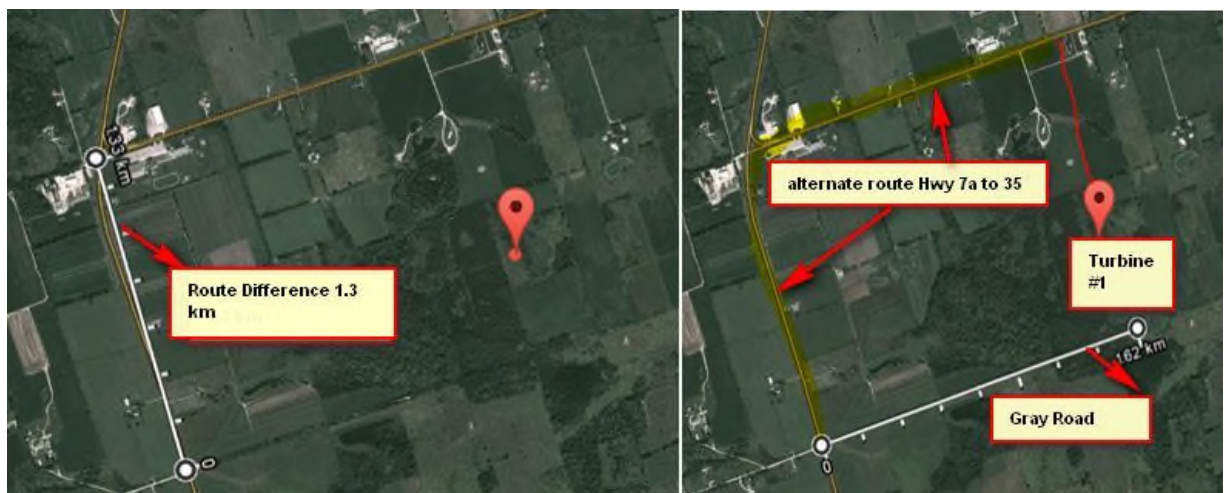
72. The Snowy Ridge project plans to run its distribution line from the switching station along Highway 7A to the Bethany Distribution Station, the Point of Common Coupling located 6.5 kms away. The following is an excerpt from the Snowy Ridge Construction Report:

*“Overhead poles will be installed at the Point of Common Coupling (PCC) for connection to the Hydro One system. Additional overhead poles for disconnect switches and other equipment may be required at this location or the substation to meet Hydro One connection requirements. Overhead cabling to be built and owned by Hydro One will run from the PCC approximately 6.5 km within existing road easements to the existing 44 kV feeder M1 at the Point of Interconnection (POI).”*²⁸

73. The wind developer for this project has already entered into an agreement with Hydro One and the overhead lines between the project substation and the distribution station along Highway 7A have been upgraded.
74. The Applicant could do the same for the Sumac Ridge project. A collector line from all the turbines could run up the to be constructed access road located on property of participating landowner Rebecca Skinner, which will extend north of Turbine # 1 and Turbine # 3 to Highway 7A. The Sumac Ridge distribution line could then run west along Highway and south along Highway 35 to the site of the switching station on the west side Highway 35 opposite the road allowance Gray Road.
75. The distribution line for the Sumac Ridge project would be increased by 1.3 km than currently proposed by the Applicant. The total distance of 2.3 km is much shorter than the 6.5 km distribution line distance for the Snowy Ridge Project.

²⁸ Snowy Ridge Wind Park Construction Report, page 11,
<http://www.capstoneinfrastructure.com/Assets/Downloads/Project%20Documents/Snowy%20Ridge/Updated%20Documents/Construction%20Plan%20Report/Construction%20Plan%20Report%20Snowy%20Ridge%20Wind%20Park%20-%202014-02-24%20.pdf>

76. This alternate distribution route will avoid the historic hydrologically and environmentally sensitive unopened road allowance Gray Road. Its character will remain unchanged and will continue to be enjoyed by users of the trail system as well as the Intervenor and other directly affected property owners. It will remain an unopened, unmaintained road allowance as intended through land planning policies set by the City of Kawartha Lakes.



Oak Ridges Moraine Legislation as Applied to Road Allowances Gray Road and Wild Turkey Road

77. The Applicant has stated in the Sumac Ridge Project Description under Section 3.91 1 that,

“As all five Project turbines are in relatively close proximity, and the ORM boundary is simply an administrative boundary on a map, the area for all five turbines was conservatively assessed as being part of the Oak Ridges Moraine. All reports and studies

*therefore considered that the entire project may be located within features of the moraine.”*²⁹

78. The Applicant stated in a letter dated January 20th, 2012 to City of Kawartha Lakes Mayor Ric McGee:

*We should note however, that we have always planned on using the Renewable Energy Approval (REA) criteria for the Oak Ridges Moraine in all of our assessments, regardless if the particular part of the project is in or out of the Moraine, and we will continue to do so.”*³⁰

*“Transportation, infrastructure and utilities on the Oak Ridges Moraine, including the opening of an unopened road allowance are prohibited in hydrologically sensitive areas. High aquifer vulnerability zones, seeps, wetlands and watercourses are hydrologically sensitive features. The need must be demonstrated and there must be no other reasonable alternative”*³¹

79. Section 44 of Ontario Regulation 359/09 Natural Features and Water Bodies — Oak Ridges Moraine states:

Water bodies

44. (1) No person shall construct, install or expand a renewable energy generation facility as part of a renewable energy project at a project location that is in any of the following locations:

A kettle lake or within 30 metres of the average annual high water mark of a kettle lake.

A permanent or intermittent stream or within 30 metres of the average annual high water mark of a permanent or intermittent stream.

A seepage area or within 30 metres of a seepage area. O. Reg. 359/09, s. 44 (1).

²⁹ Sumac Ridge Project Description, page 19

http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_2_PDR_20120601_Web.pdf

³⁰ Tab 11 - Wpd to Mayor Ric McGee Jan 20, 2011_Sumac Ridge ORM

³¹ Oak Ridges Moraine Conservation Plan, Section 41

http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_020140_e.htm#BK30

80. The Sumac Ridge Water Report indicates under Section 5.4 Intermittent Streams,

*“There are two main intermittent tributaries of the Pigeon River that are located within the project area (Figure 1). The tributaries flow west and southwest respectfully, merge at Hwy 35 and Gray Road, and continue west towards the Pigeon River. Their respective confluence at Hwy 35 has been designated as station PRT1. There are also two branches (PRT3 and PRT4) of the north half of this tributary which are located north end of the project area.”*³²

81. The Sumac Ridge Water Report acknowledges the presence of a seep in the middle of Gray Road:

*“S3 is a natural seepage area located up the slope directly on Gray Road (Figure 1). The soils here are sandy and presumably lie atop a layer of finer-textured soils, which causes water to seep out at this specific location. During the April 2011 site investigation, there was an extensive ice sheet present down the road originating near the source of the seep, and therefore substantial seepage continues through the winter. This seepage area is located along the path of the above ground electrical line.”*³³

82. The Water Report indicates the documented seep is “in the path of the above ground electrical line along Gray Road” and that intermittent stream Pigeon River # 1 PRT1 “is located “9.5 m from the switching station area and above ground electrical line”.³⁴ Both water features are located within the prohibited 30 m setback under O. Reg 359/09 as applied to the Oak Ridges Moraine which the Applicant has stated applies to the complete project area.
83. The distribution line across Wild Turkey Road is located on the Oak Ridges Moraine between two hydrologically sensitive features described as Fleetwood Creek Headwaters

³²Sumac Ridge NRSI Water Report and Environmental Impact Study, page 12,
http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_8_WR___EIS_20120301_Web.pdf

³³Sumac Ridge NRSI Water Report and Environmental Impact Study, page 23,
http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_8_WR___EIS_20120301_Web.pdf

³⁴Sumac Ridge NRSI Water Report and Environmental Impact Study, Aquatic Features, Aquatic Features Table,
http://canada.wpd.de/uploads/tx_projectdownloads/SUMA_8_WR___EIS_20120301_Web.pdf

FCH A and B, water features the Applicant has not disclosed in its Location Drawings.

Under the ORMCP the opening of Wild Turkey Road is prohibited.

Wild Turkey Road Allowance



84. Like the road allowance Gray Road, Wild Turkey Road is a historic road allowance dating back to the early 1800s; perhaps earlier. It is unmaintained and many drivers unfamiliar with the road allowance have found themselves in need of assistance when trying to navigate this road allowance during the winter and early spring months. The unopened section of Wild Turkey Road, where the Applicant indicates it wishes to construct an underground collector line across is located on the Oak Ridges Moraine.
85. The Land Surveyor firm, Coe Fisher Cameron of Lindsay, Ontario was retained in May 2014 to conduct a survey on the proposed site of Turbine # 5, which was conducted on May 30th, 2014. The survey firm was also asked to confirm the Applicant's drawings provided to the Ontario Energy Board that indicate the road allowance Wild Turkey Road is a 'forced road'.³⁵

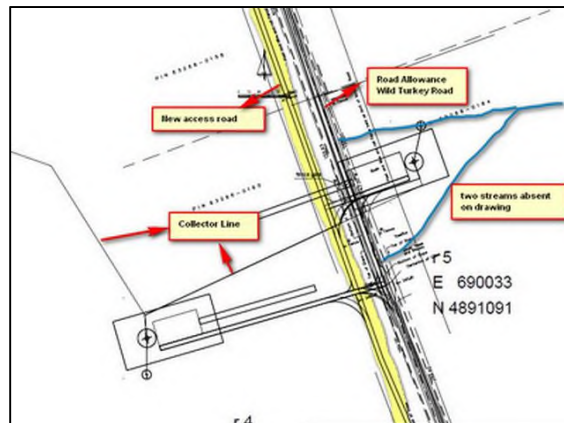
³⁵ Tab 10 - Turbine 5 Topographic Survey, Coe Fisher Cameron

86. Surveyor Hermann Wimmelbacher ³⁶ of Coe Fisher Cameron researched the background of the unopened municipal road allowance Wild Turkey Road. Mr. Wimmelbacher discovered through historic records from the Ministry of Natural Resources and Forests that the road allowance is not a forced road, but was approved as a Quarter Sessions road in 1839 and thus is owned by the municipality. It was also discovered by Mr. Wimmelbacher that this road allowance is possibly wider by 5 m than currently thought.
- ³⁷
87. This new information means all components involved with the construction of Turbine # 5 may need to be moved a minimum of 2.5 m eastward. The relocation will affect the position and length of the collector line included in this application before the Ontario Energy Board.
88. Mr. Wimmelbacher has indicated more research needs to be conducted to verify the evidence he uncovered. In light of these new discoveries, it is premature for this application before the Board to be considered. The location of the collector line in the application arguably is not accurate.
89. Mr. Wimmelbacher gave evidence under oath to this information regarding the road allowance Wild Turkey Road at the Environmental Review Tribunal Hearing a copy of which has been provided.
90. In addition, the Location Drawings provided by the Applicant to the OEB on December 5th, 2014, indicate the presence of another access road parallel to Wild Turkey Road. This is new information that has not been provided to the MOECC. This 'new' access road highlighted in the section below taken from the drawing provided by the Applicant

³⁶ Tab 9 - Witness Statement of Herman Wimmelbacher, Tab 9A - CV of Herman Wimmelbacher

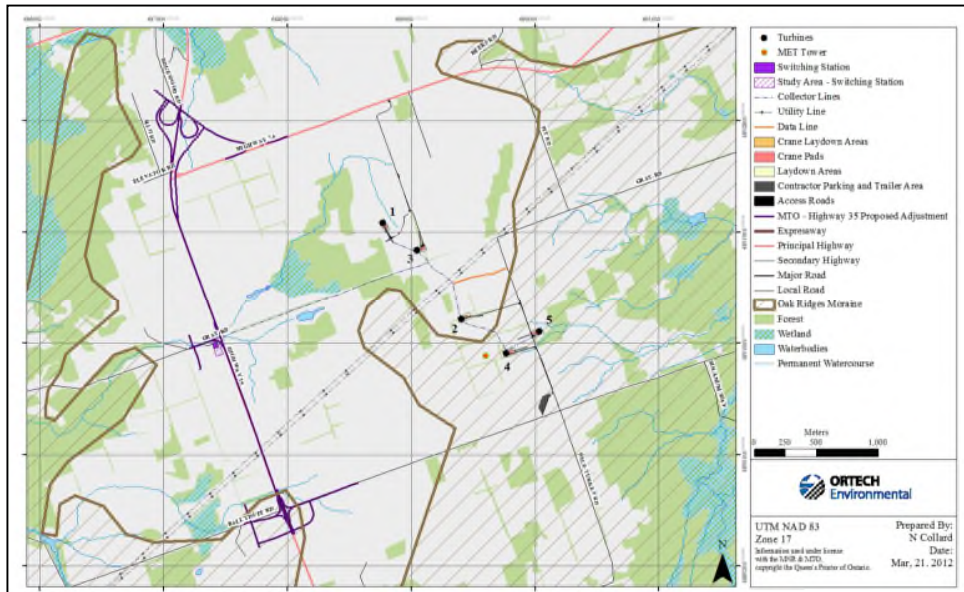
³⁷ Tab 13 - QSRD VOL 21 PG 185

crosses the collector line. The applicant has not provided any environmental, archaeological or technical information regarding this ‘new’ access road or its impact on construction of the underground collector line crossing.



Approval Holder's Location Drawing close-up provided by Applicant with red arrows, yellow highlighted road, information boxes and blue lines to mark the missing headwaters added by the Intervenor

91. The Location Drawing provided by the Applicant on December 5th, 2014 does not include the two headwaters that frame the site of Turbine # 5. The headwaters are evident in the Applicant's project map below. This map which was included in the Sumac Ridge REA application also does not include the 'new' access road.



Source: Sumac Ridge Project Description, page 20, which shows the two streams and only one access road along the road allowance Wild Turkey Road.

Summary

92. The Applicant is proposing to significantly alter a historic landscape without due or proper consideration to the area's historical, cultural, social, economic, and environmental heritage. The economic, physical, social and environmental health of a unique area located within and surrounding the Oak Ridges Moraine is being put at risk with little or no local offset benefit.
93. Section D 1.3 of this Application, EB 2013-0042, states wpd Sumac Ridge Inc. is seeking relief from the Ontario Energy Board because the City of Kawartha Lakes has refused to enter into an agreement for the use of the road allowance Gray Road to construct a distribution line and is being un-cooperative.
94. The road use agreement assembled by the Applicant presented to and denied by the City of Kawartha Lakes does not include specific and accurate information about the

construction of distribution line along the unopened, unmaintained road allowance Gray Road or a collector line crossing the unmaintained road allowance Wild Turkey Road.

95. The Applicant has consistently provided contradictory, insufficient or incomplete information to the Ontario Energy Board, the Ministry of the Environment and Climate Change, the City of Kawartha Lakes, local residents and the public regarding the planned distribution line along the unopened road allowance Gray Road as well as the collector line to cross the road allowance Wild Turkey Road.
96. Evidence has been presented that it is the Applicant who has consistently been un-cooperative by not providing requested information, or providing incomplete, inaccurate and contradictory information.
97. The Applicant has stated in its REA application that it intends to apply the REA criteria as it applies to the Oak Ridges Moraine, but has ignored those criteria including strict setbacks for seeps and intermittent streams.
98. The Applicant attempted to circumvent the wishes of the City of Kawartha Lakes to keep both road allowances Gray Road and Wild Turkey Road as unassumed, unmaintained passageways by mounting its own Municipal Class B Environmental Assessment. The City of Kawartha Lakes of Kawartha specifically advised wpd that they did not have the authorization from the City to conduct a Municipal EA on behalf of the City of Kawartha Lakes. The Ministry of the Environment and Climate Change subsequently refused to accept the Applicant's Notice of Completion stating the Applicant has no authority to undertake such an environmental assessment under the Ontario Environmental Assessment Act.

*Narren Santos on behalf of Agatha Garcia- Wright – MOECC
2014-Nov-19 Email Letter attached, dated 2014-Nov-17 - A*

*Garcia-Wright acknowledged receipt of 2014Sep18 Notice of Completion for MCEA, and indicated Part II Order requests had been received Explained that only municipalities and developers whose undertakings have been designated by regulation and the EAA are authorized to proceed with undertakings in accordance with MCEA; wpd must still consult with municipality to determine what authorizations are required prior to proceeding as such, MOECC will not consider wpd's Notice of Completion and Part II Order requests received*³⁸

99. Considering the constant change, incomplete and inaccurate information provided by the Applicant numerous times to numerous agencies and persons, there is no guarantee that the application presented before the Ontario Energy Board here is accurate and workable. There is no guarantee the Applicant will not change the configuration of the line along the road allowance Gray Road and the collector line under the road allowance Wild Turkey Road in the future. The road allowance Gray Road is located within is a hydrologically sensitive area, Contaminants released from construction or maintenance vehicles, other vehicle traffic once the allowance is widened to accommodate traffic, illegal activities will threaten surface and groundwater resources placing all life human and wild in jeopardy. The Applicant has not undertaken a hydrogeological study. There has been no borehole testing along the length of Gray Road. Treated poles do leach contaminants such as arsenic, chromium and copper. The rate of leachate into the surrounding area will be greater in water saturated soils. The Applicant has provided incomplete and inaccurate details on what needs to be done to the road allowance in order to construct the distribution line of 22 hydro poles.

³⁸ Post Post-Final Report Consultation Appendices dated December 22nd, 2014 wpd Canada Municipal Class EA <http://www.municipalea2014.ca/>

100. As indicated by the Intervenor, there is an alternative route available that allows for the protection of the environmental integrity of the road allowance Gray Road, so that it can be retained in its current form as a trail enjoyed by local residents and visitors.
101. The collector line crossing proposed to be constructed under the road allowance Wild Turkey Road is premature. New information uncovered by surveyors to the actual width and location of the road allowance needs to be confirmed through new surveys. The entire site of Turbine # 5 which includes the collector line, it appears likely, will have to be re-located.
102. For all of the reasons contained in this submission of evidence, it is requested that the Ontario Energy Board deny the application before them.

Date: January 26, 2015

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